636.

SUPREME COURT OF THE UNITED STATES.

No. 119.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM D. FOXEN.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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GIDEON, Print.

Transcript of the proceedings in case No. 219—*William D. Foxen, claimant*, vs. *The United States, defendant—for the place named "Tinacal."*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this seventh day of May, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of William D. Foxen, for the place named "Tinacal," was presented, and ordered to be filed and docketed with No. 219, and is as follows, to wit:

(Vide pages 3 and 4 of this Transcript.)

Upon which petition, the following subsequent proceedings were had in their chronological order, to wit:

SATURDAY, *May 8th*, 1852.

In case No. 219, William D. Foxen, the deposition of Pablo de la Guerra, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed, and is in the words and figures as follows, to wit:

(Vide pages of this Transcript, 5, 6 and 7.)

FRIDAY, *Sept. 3d*, 1852.

In case No. 219, W. D. Foxen, for the place called "Tinacal," the parties litigant filed the following stipulations relative to placing this case on the trial docket, which is as follows, to wit:

We agree that the above entitled cause be put on the trial docket, with the stipulation, which is hereby entered into, that either the *land* agent or the claimant may introduce further testimony previous to the argument of the case.

HALLECK, PEACHY & BILLINGS,
Att'ys for Claimant.
GEO. W. COOLEY, *U. S. Land Agent.*

FRIDAY, *Sept. 3d*, 1852.

The following case was ordered to be placed on the trial docket, subject to the stipulation filed by the parties litigant, to wit: No. 219, W. D. Foxen—"Tinacal."

FRIDAY, *January 28th*, 1853.

Case No. 219, Guillermo Domingo Foxen, *from* the place named "Tinacal," called, and was submitted by Mr. Halleck, counsel for

claimant, with the papers in evidence, by the consent of the United States associate land agent, without argument, and taken advisement by the board.

MONDAY, *February 7th*, 1853.

In case No. 219, Guillermo Domingo Foxen, for the place named "Tinacal," Commissioner Harry J. Thornton delivered the opinion and the decree of final confirmation of this board.

Ordered, that the opinion and the decree of final confirmation of this board, delivered this day in this case, be recorded in the journal.

Which opinion and decree are in the words and figures as follows, to wit:

(Vide pages of this Transcript 36, 37, and 38.)

To the honorable Commissioners to settle private land claims in California:

The petitioner, William Domingo Foxen, respectfully represents:

That in the month of May, A. D. 1837, he received from Juan B. Alvarado, the then governor of California, a grant for the tract of land called "Tinacal."

That on the 29th day of April, A. D. 1842, Juan B. Alvarado, governor of California, by virtue of authority in him vested, made a new grant of the said tract of land called "Tinacal," situate in the then jurisdiction and now county of Santa Barbara, more particularly defining its boundaries and specifying its extent, the same being two square leagues; all of which is fully shown in the espediente, a certified copy of which is submitted herewith marked "A," with a translation marked "B," and also a copy of the second title marked "C," with a translation marked "D."

That on the 13th day of June, A. D. 1842, the said tract of land was duly surveyed by the proper authority and the juridical possession of it given to the petitioner, a copy of which act of possession is submitted herewith marked "E," with a translation marked "F."

That the said tract of land has not been surveyed by the Surveyor General of the United States, but that it was duly surveyed and the boundaries marked out by the proper authority in 1842, as aforesaid.

That the petitioner has been since the beginning of the year 1837, and now is, in the quiet, peaceful and undisputed possession and occupation of the said tract of land.

That he knows of no conflicting claim.

That he relies for confirmation of title upon the original papers, copies of which are submitted herewith, upon the records and minutes in the office of the Surveyor General, and upon such other and further proofs as he may be advised are necessary.

Wherefore he prays the commissioners to confirm to him the said tract of land.

By his attorneys,

HALLECK, PEACHY & BILLINGS.

Filed in office, May 7th, 1852. GEO. FISHER, *Sec'y*.

Deposition of Pablo de la Guerra.

OFFICE OF THE BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS, SAN FRANCISCO, *May 9th*, 1852.

On this day, before me, Hiland Hall, one of the commissioners for ascertaining and settling the private land claims in the State of California, came Pablo de la Guerra, a witness in behalf of claimant, William D. Foxen, whose petition is number 219 on the docket of the board, and was duly sworn.

The land agent was notified and attended.

In answer to questions put by the claimant's counsel, the witness testified as follows:

1st Question. What is your name, age and place of residence?

Answer. My name is Pablo de la Guerra; my age 32 years; I reside in Santa Barbara, and have resided in California all my life.

2d Question. Do you know the signatures of Juan B. Alvarado, Manuel Jimeno, Joaquin Carrillo, Francisco Cota, and J. R. Malo? If so, say whether their signatures to the documents before you are genuine, whether the documents are genuine and originals, and whether the papers marked exhibits "C" and "E," filed in claim No. 219 in the office of the secretary of the commissioners, are true copies of these originals.

Answer. I am well acquainted with the signatures of Juan B. Alvarado, Manuel Jimeno, Joaquin Carrillo, Francisco Cota, and J. R. Malo; their signatures to the papers before me are genuine, and the papers are genuine and originals; I have compared them with exhibits "C" and "E," filed in claim No. 219 in the office of the secretary of the commissioners, and find the latter to be true copies of these originals.

3d Question. What do you know about the possession and occupation of the rancho of "Tinacal," referred to in the claim of W. D. Foxen, as above mentioned.

Answer. I know the said rancho, and know that it has been occupied by William D. Foxen for many years; he has had a house on it; has occupied it with cattle and horses, and cultivated some portion of the land; he occupies it at the present time, and has cattle and horses upon it. I never have heard his title to it disputed; I think he has occupied the land ever since the date of his first grant in 1837.

In answer to questions put by the land agent, the witness says he thinks Foxen was living on the land in his dwelling-house in 1837; and he continued there until about the year 1847 and 1848, when his family removed in consequence of fear of the wild Indians.

The farm has since been occupied with cattle, and still is; he and his son frequently go there to see their cattle.

The land has been sufficiently cultivated to furnish supplies for his family, but has been principally used as a cattle farm; the land may

be within ten leagues of the coast, and may not be; it is about that distance; I cannot tell the precise distance.

PABLO DE LA GUERRA.

Sworn and subscribed before me,

HILAND HALL, *Com'r.*

Filed in office, May 8th, 1852.

GEO. FISHER, *Sec'y.*

Original of Spanish Documents C and E, annexed to Deposition of Pablo de la Guerra.

Sello Primero, Seis Pesos.

Habilitado provicionalmente por la aduana maritima de Monterey, para los años de 1842 y 1843.

ALVARADO. ANTO. MA. OSIO.

[Aduana maritima de Monterey. Place of Eagle.]

Juan B. Alvarado, Gobernador Constitucional del Departamento de las Californias:

Por cuanto Dn. Guillermo Domingo Foxen, naturalizado en la Republica Mejicana, ha pretendido para su beneficio personal y el de su familia el parage conocido con el nombre de Tinaqua, colindante con el Arroyo Seco, por el rumbo del oeste, y al sur y al norte con las lomas de Tinaqua. Siendo los limites por el rumbo del este, el monte inmediato á la casa que actualmente está construida practicadas previamente las diligencias y averiguaciones consernientes, segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas á nombre de la nacion Mejicana ha venido en concederle el terreno mencionado. Declarandole la propiedad de el por las presentes letras, sugetandose á la aprovacion de la Ex'ma Junta Departamental, y bajo las condiciones siguientes:

1st. Podra cercalo sin perjudicar las travesias caminos y servidumbres; lo disfrutara libre y esclusivamente destinandole al uso ó cultivo que mas le acomode; pero dentro de un año fabricará casa y estara habitada.

2a. Solicitará del juez respectivo que le de la posecion juridica, en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra á mas de las mojoneras algunos arboles, frutales, ó silvestres de alguno utilidad.

3a. El terreno de que se hace, donacion es de dos sitios de ganado mayor, segun esplica el diseño ql. corre agregado en el espediente respectivo. El juez que diere la posecion lo hará medir conforme á ordenanza quedando el sobrante que resulte para los usos convenientes.

4a. Si contraviniere á estas condiciones perdera su derecho al terreno y ser denunciable por otro.

En consecuencia mando que teniendose por firme y valedero el presente titulo, se tome razon de el y se entreque al interesante para su resguardo y demas fines.

Dado en Monterey, á veinte y nueve de Abril, de mil ochocientos cuarenta y dos.

JUAN B. ALVARADO.

MAN'L JIMENO, *Secretario.*

Queda tomada razon de este despacho en el libro de asientos sobre adjudicacion de terrenos valdios, a fa. 11, Va.

JIMENO.

El ex'ma sr. gobernador, ordena se tome razon de esta concecion en la prefectura del seguna distrito.

JIMENO.

Sello Tercero, Dos Reales.

Habilitada provisionalmente por la aduana maratima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ALVARADO. ANTONIO MA. OSIO.

[Aduana maritima de Monterey. Place of Seal.]

Habilitado provicionalmente por la misma previa el año de mil ochocientos cuarenta y dos.

ALVARADO. ANTONIO MA. OSIO.

[*Here follows a map or plan, No.* 1.]

El que suscribe: Secretario del departamento, certifica que el diseño que se demuestra á la vuelta es igual al original que existe en la secretaria de mi cargo.

Monterey, Abril 29, de 1842.

MAN'L JIMENO.

S'or Juez de Paz:

Guillermo Domingo Foxen, ante V. con el debido, respeto comparece y dice: Que habiendo obtenido de este gobierno el titulo del parage llamado Tinaqua. Dado en 29 de Abril del presente año, que debidamente accompaña.

Suplica á V. se serva (cuando se le permitan sus occupaciones,) darle la correspondiente possession juridica segun está mandado en el referido titulo. P. T., a V. encarecidamente ruega tenga la bondad acceder á sus deseos. Sirvendose admitir este en papel comun por no haber aqui del sello correspondiente.

Santa Barbara, 27 de Mayo, de 1842.

GUILL'O DOMINGO FOXEN.

S'TA BARBARA, *27 de Mayo, de* 1842.

En virtud de la antecedente solicitud procedase por un el presente juez al a medicion senalm'to de linderos y posecion juridical q. solicita el interesado en este espediente, senalandose pa. efectuar el tres de Junio, del corriente año, para lo que se citaran con valeta de comparecido á los colindantes, asi yo el mencionado juez lo decreto, mando y firmo,

con los testigos de asistencia, con quienes actia pa. resistoria á falta de escribano publico, doy fé.

JOAQ'N CARRILLO.

As'a: J. R. Malo,
As'a: Fran'co Cota.

En la f'ha presente D. Guillermo Domingo Foxen, se le notifico el auto antecedente y de el entendido, digo lo olle que dara pr. citado, y lo firmo con migo y los testigos de assistencia.

J. CARRILLO,
GUILLERMO D. FOXEN.

As'a: J. R. Malo,
As'a: Francisco Cota.

En la misma f'ha se libraron las boletas que se mandar en el antecedente auto y pa. que conste lo rubrique.

En el Rancho de Tinaque á los trese dias del mes de Junio, de mil ochocientos cuarenta y dos, en complimiento del auto de veinte y siete del mes pasado concluido el ciud'no Tomas Olivera, como colindante de este rancho y citado pa. la medicion senalamiente de linderos y posecion, nombre por medidores á los ciudadanos José Maria Valenzuela y Gaudeloupe Olveira, quienes previo la aceptacion y juram'te procedieron al desempeño de su encargo, asi yo el d'ho juez lo decretó, mando y firmo, con los testigos de asistencia.

J. CARILLO.

As'a: J. R. Malo,
As'a: Fran'co Cota.

En la f'ha se les notifico el auto y antecede á las colindantes y entendidos, dijeron q. lo ollen y formaron con migo y los testigos de asistencia, no habiendo comparecedo en el encargo de S'ta Juez.

J. CARRILLO,
TOMAS OLVERA.

As'a: J. R. Malo,
As'a: Francisco Cota.

En la misma f'ha y en el espresado rancho, se les notifico el auto en el q. aparece nombrados medidores á los ciud'os José Ma. Valenzuela y Gaudeloupe Olivera, y entendidos dijeron y aceptan, y aceptaban d'ho encargo y juraron pa. Dios nuestro S'or, y la señal de la S'ta Cruz, aser lo fiel y legalmente á todo su leal saber y entender sin dalo ó fraude contra persona alguna, y por no saber firmar hicieron una señal de cruz, y firmé yo con los testigos de asistencia.

JOSE MA. VALENZUELA,
J. CARRILLO,
GAUDELOUPE OLVEIRA. ✕

As'a: J. R. Malo,
As'a: Francisco Cota.

Incontinenmente yo el juez traer á mi presencia el cordel q. con que, se á de medir las tierras y q. los medidores lo median de cincuenta varas y lo firmé con los de asistencia.

J. CARRILLO.

Ass'a: J. R. MALO,
Ass'a: FRANCO. COTA.

En la misma f'ha en presencia de mi el referido juez, los espresados medidores tomaran el cordel de riata y con una vara Mejicana, de medir tomandola en la mando midieron cincuenta varas, pr. aser la referida medicion y pa. constancia lo rubrique.

En la misma f'ha y en el referido rancho siendo las siete de la mañana yo el presente juez mandé á los medidores se pongan pa. la medicion q. se á de aser del terreno conocido, con el nombre de Tinaqua, pr. que el mencionado Dn. Guillermo Domingo Foxen, tome posecion de el y para dos cerca de la Cañada contigua al Aroyo Seco. Empareron las mediciones, tomando el rumbo del este hta. pasar el monte de Tinaqua, en donde habiendo llegado dejeron haber docientos cordeles. En seguida pasado en la cuchilla de las lomas de Tinaquea, situados rumbo al sur en donde se claba un palo, se tiro el cordel rumbo al norte pa. las lomas de Tinaquim hta. el picacho mas alto de la cuchilla. Se midieron cien cordeles habiendose concluido esta medieron resulto dos citios de ganado mayor, y habiendose echo el senal'mte de linderos en la loca de la Cañada contigua al Arroyo Seco, delante del monte de Tinaqueae, en la cuchilla rumbo al sur de Tinaquea, y en la cuchilla del picacho de Tinaquiae rumbo al norte, mandé formanse mojoneras y pa. constancia lo firmo pr. anto con los testigos de asistencia.

J. CARRILLO.

Asistencia: J. R. MALO,
As'a: FRANCISCO COTA.

En la misma f'ha yo el indicado juez mando, que en virtud de haberse medido el terreno y haberse echo el senalm'te de linderos de ponga la posecion juridica S'or D. Guillermo Domingo Foxen, y notifique se les a las colindantes.

J. CARRILLO.

As'a: J. R. MALO,
As'a: FRANCISCO COTA.

En la f'ha se les notifico á los colindantes Tomas Olivera, como dueño del rancho del Acapusque, el auto y entendido dijo q. lo hora y firmó con migo y los de asistencia.

J. CARRILLO,
TOMAS OLIVERA.

J. R. MALO,
FRAN'CO COTA.

En rancho de Tinaquim siendo como a las cuatro de la tarde del mismo dia, mes y año, el Sr. Dn. Guillermo Foxen, vecino de Sta.

Barbara, acompañado del juez y testigos con animo segun dijo de tomar la verdadera corporal y real posecion del espresado terreno de Tinaqua, pr. haber le pertenecido con justo titulo y obtuvo del gobierno politico de este departamiento, con f'ha 29 de Abril, del corriente año, entro y paso pr d'ho terreno arranco yerbas, esparcio punadas de tierra, rompio ramas de arboles, hiso otras sermonias de verdedera posecion en señal de lo que; digo tomar y q. tomaba de dichas tierras q. mande yo, el citado juez, q. desde entonces le tuvieren y reconociesen al mencionado S'or Foxen, pr. verdadero dueño S'or, y posedor de ella de todo lo referido pido el S'or referido Foxen, y para memoria en la venidero y conservacion de sus derechos, pr. mi el juez le fuese estendida una constacia lo q.; asi fué autorisada siendo testigos de asistencia los Ss. Ramon Malo y Francisco Cota, con quienes actuo en receptoria a falta de escribano publico q. no hay, segun d'ho, doy fee.

JOAQUIN CARRILLO.

As'a: J. R. MALO, x
As'a: FRAN'CO COTA.

Filed in office, D. 29, 1852. GEO. FISHER, *Sec'y.*

"D."—Translation of Title.

Stamp First, Six Dollars.

Provisionally authorized by the maratime custom-house of Monterey, for the years 1842 and 1843.

(Signed) ALVARADO,
(Signed) ANTONIO MA. OSIO.

[Monterey Custom house.]

Juan B. Alvarado, Constitutional Governor of the Department of the Californias:

Whereas, Don Guillermo Domingo Foxen, naturalized in the Mexican republic, has, for his own personal benefit and that of his family, petitioned for the place known by the name of Tinaqua, bounded by the Arroyo Seco on the west, on the south and north by the hills of Tinaqua, the limits on the east being the thicket (monte) near the house which is at present built there; the proper measures and examinations being previously made, as required by law and regulations; using the faculties which are conferred on me in the name of the Mexican nation, I have granted him the aforesaid land, declaring to him the ownership of it by these presents, subject to the approval of the most excellent departmental assembly, and under the following conditions, viz:

1st. He may enclose it without prejudice to the crossings, roads and servitudes, and enjoy it freely and exclusively, making such use or cultivation of it as he may see fit, but within one year he shall build a house on it and it shall be inhabited.

2d. He shall request the proper magistrate to give him juridical pos-

session, in virtue of this order, by whom the boundaries will be marked out, in which, besides the bounds, he shall place some fruit or forest trees of some utility.

3d. The land of which donation is made is two square leagues, as shown by the map which goes with the espediente.

The magistrate who may give the possession will cause it to be measured, in conformity with the ordinance, leaving to the nation for its convenient uses the surplus which may result.

4th. If he shall contravene these conditions, he shall lose his right to the land, and he will be subject to denouncement by another person.

In consequence, I order, that the present title being held as firm and valid, note be made of it, and it be delivered to the person interested, for his security and other purposes.

Given in Monterey, on the twenty-ninth of April, one thousand eight hundred forty-two.

(Signed) JUAN B. ALVARADO.
(Signed) MANUEL JIMENO,
Secretary.

Note has been made of this title in the book of entries of grants of vacant lands, in folio 11, over.

(Signed) JIMENO.

His excellency the governor orders that note be made of this grant, in the prefectura of the second district.

(Signed) JIMENO.

Filed in office, May 7th, 1852.

GEO. FISHER, *Sec'y.*

"*F.*"—*Translation of Juridical Possession.*

To the Justice of the Peace:

Guillermo Domingo Foxen, before you with due respect appears and says, having obtained from this Government the title of the place called Tinaqua, given on the 29th of April of the present year, which he duly transmits, he prays you to be pleased (when your occupations permit) to give him the corresponding juridical possession, as directed in the aforesaid title.

Wherefore, he earnestly prays you to have the goodness to accede to his wishes, being pleased to admit this on common paper, there being none of the corresponding stamp here.

(Signed) GUILLERMO DOMINGO FOXEN.

Santa Barbara, May 27, 1842.

ST. BARBARA, *May* 27, 1842.

In virtue of the foregoing petition, I, the present magistrate, will proceed to the measurement, juridical possession and designation of boundaries, which the person interested in this espediente requests, designating, for the purpose of carrying it into effect, the thirteenth day

of June of this year, for which written summons will be issued to the colindantes.

Thus I, the aforesaid magistrate, decreed, ordered, and signed with the assisting witnesses, with whom I act in virtue of my office; for want of a notary public, I certify.

(Signed) JOAQUIN CARILLO.

Assisting witnesses:
(Sgd.) J. R. MALO,
(Sgd.) FRAN'CO COTA.

On the same day, present Don Guillermo Dominga Foxen, he was notified of the preceding order, and having understood it, he acknowledged notice, and signed it with me and the assisting witnesses.

(Signed) GUILLERMO DOMINGO FOXEN,
(") JOAQUIN CARRILLO.

Assisting witnesses:
(Signed) J. R. MALO.
(Signed) FRANCISCO COTA.

On the same date, the written summons ordered in the foregoing act were issued, and in testimony I signed it in rubrick.

(Rubrick of Joaquin Carrillo.)

In the rancho of Tinaqua, on the thirteenth day of the month of June, one thousand eight hundred and forty-two, in compliance with the order of the twenty-seventh of last month, there appeared citizen Tomas Olvera as colindante of this rancho, and summoned to attend the measurement, marking of boundaries and possession. I appointed measurers; citizens José Maria Valenzuela and Gaudeloupe Olivera will proceed to discharge (the duties of) their office. Thus I, the said magistrate, decreed, ordered and signed, with the assisting witnesses.

(Signed) J. CARILLO.

(Signed) J. R. MALO,
(") FRAN'CO COTA.

On the same date, the foregoing order was notified to the colindantes, and having understood it, they said that they heard it, and signed with me and the assisting witnesses; the person in charge of Santa Ynes not having appeared.

(Signed) TOMAS OLIVERA,
(") J. CARILLO.

Assisting witnesses:
(Signed) J. R. MALO,
(") F'RAN'CO COTA.

On the same date and in the aforesaid rancho, citizens José Maria Valenzuela and Gaudeloupe Olivera were notified of the order in which

they appear appointed measurers, and having understood it, they said that they accepted; and they did accept said office, and made oath, by God our Lord and the sign of the holy cross, to perform (its duties) faithfully, to the best of their knowledge and belief, without deceit or fraud against any person; and not knowing how to write, they made a sign of the cross, and I signed with the assisting witnesses.

JOSE MARIA ✕ VALENZUELA,
GAUDELOUPE ✕ OLIVERA.

(S'gnd) J. CARILLO.

Assisting witnesses:
(S'gnd) J. R. MALO,
(") FRAN'CO COTA.

Immediately I, the magistrate, ordered the cord to be brought to my presence, with which the lands are to be measured, and that the measurers mark off fifty varas. And I signed it with those of my assistance.

(Signed) JOAQUIN CARILLO.

Assisting witnesses:
(S'gnd) J. R. MALO,
(") FRAN'CO COTA.

In the same date, before me, the aforesaid magistrate, the said measurers took a rope of hide, (cordel de reata,) and with a Mexican vara measure, taking it in the hand, they measured off fifty varas, with which to make the aforesaid measurement, and in testimony I signed it in rubrick.

(Rubrick of Joaquin Carillo.)

On the same date, and in the aforesaid rancho, about seven o'clock in the morning, I, the present magistrate, ordered the measurers to prepare for the measurement which has to be made of the land known by the name of Tinaqua, in order that the said Don Guillermo Domingo Foxen may take possession of it, and standing near the mouth of the Cañada, near the Dry creek, (Arroyo Seco,) they commenced the measurements, taking an easterly direction until they passed the thicket (monte) of Tinaquiam, which distance they said was two hundred cordels; thence, standing on the ridge of the hills of Tiniaquiae, situated on the south, where a stake was driven, the cord was drawn northerly to the hills of Tinaquiae to the highest peak of the ridge, and one hundred cordels were measured. This measurement being thus concluded, there proved to be two square leagues, and the boundaries having been designated as in the mouth of the cañada, near the Arroyo Seco, in front of the southern side of the "Monte de Tinaquae," in the ridge of the peak of Tinaquae on the north, I ordered that bounds be formed, and in testimony I signed it officially, with assisting witnesses.

(S'gnd) J. CARRILLO.

Ass'tg witnesses:
(Sig'nd) J. R. MALO,
(") FRANC'O COTA.

On the same date, I, the aforesaid magistrate, ordered, that in virtue of the land having been measured and the boundaries designated, Don Guillermo Domingo Foxen be put in juridical possession, and that the colindantes be notified. And I signed this officially, with the assisting witnesses.

(S'gnd) J. CARILLO.

Assisting witnesses:

(S'gnd) J. R. MALO,

(") FRAN'CO COTA.

On the same day the colindantes, Tomas Olvera, owner of the rancho of Acapusque, was notified of the act, and having understood it, he said that he heard it, and signed with me and those of assistance.

(S'gnd) J. CARILLO.

Assisting witnesses:

(S'gnd) J. R. MALO,

(") FRAN'CO COTA.

In the rancho of Tinaqua, about four o'clock, afternoon, of the same day, month and year, Don Guillermo Foxen, resident of Santa Barbara, accompanied by the magistrate and witnesses, with the intention, as he said, of taking the true, corporeal and real possession of the aforesaid land of Tinaqua, as it belongs to him by a just title which he obtained from the political government of this department on the 29th of April of this year, entered upon and walked over said land, pulled up grass, scattered hands full of earth, broke branches of trees, and made other ceremonies of true possession, in sign of that which he said he took, and which he did take of said land. And I, the aforesaid magistrate, ordered, that from that time forth the before-mentioned Señor Foxen be held and recognised as the true owner and possessor of it.

And the said Señor Foxen prayed, that for a future testimony and the preservation of his rights, a certified copy of all the foregoing be issued to him by me, the magistrate, which was so authorized, the assisting witnesses being the Señores Ramon Malo and Francisco Cota, with whom I act in virtue of my office for want of a notary public, there being none, according to law. I certify.

(S'gnd) JOAQUIN CARILLO.

Assisting witnesses:

(S'gnd) J. R. MALO,

(") FRAN'CO COTA.

Filed in office, May 7, 1852.

GEO. FISHER, *Sec'y.*

[1 S. D. K.]

Espediente promovido por Dn. Guillermo Domingo Foxen, en solicitud del parage conocido con el nombre de "Tinacal."—Año de 1837.

(272.)

[2 S. D. K.]

A.—Rancho de Tinacal.

Sello Cuarto, Una Cuartilla.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departamiento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ALVARADO. ANTONIO MA. OSIO.

[Aduana Maritima de Monterey.]

Ex'mo S'or Gobernador:

El C. Guillermo Domingo Foxen, natural del regio de Ynglatierra y avecindado en esta territorio, como diez y seis años y casado en el mismo, ante V. E. con el debido respeto y conforme haya lugar en derecho. Dijo que hallandose en possibilidad de fomentar y cultivar un terreno q. se halla valdio en el Cañada de Tinaquiae, este parage no reconce propiedad particular de ninguno individur ó pueblo y por consiguiente, se halla valdio y en estado de adjudicacion en el colonizacion conforme a las leyes acomañando el diseño correspondiente. P. T., a V. E. suplico se sirva proveer como pido en lo que recibiré merced y gracia. Jurando no ser de malicia, y lo necesario. D.

Santa Barbara, 12 de Mayo, de 1837.

GUILLERMO DOMINGO FOXEN.

[4 S. D. K.]

MONTEREY, *Abril* 29, *de* 1842.

Estando ocupando Dn. Guillermo Domingo Foxen el terreno de que hace mencion esta instancia desde el año de 1837, y no habiendo inconveniente ninguno para su consecion, le declaro dueno—

[Sello Cuarto, Una Cuartilla.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departamiento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ALVARADO. ANTONIO MA. OSIO.]

[Aduana Maritima de Monterey.]

—del paraje nombrado Tinacal, en conformidad á las leyes reglamentos de la materia; agreguese el diseño correspondiente, q. entendare el debido despacho dirigiendose el espediente a la ex'ma junta departamental para su aprobacion. Ex ex'ma S'r gobernador, asi lo mandó, decretó y firmó, de que doy fée.

[5 S. D. K.]

El ciud'no Juan B. Alvarado, gobernador int'o del Estado, libre y soberano de la Alta California, y presid'te de la ex'ma dip'on engado en congresso constituyente.

Por cuanto el S'or Guillermo Foxen, natural de la Gran Britaña y naturalizado en los Estados Unidos Mejicanos, ha pretendido para su benificio personal y el de su familia, el terreno conocido con el nombre de Tinaqual, dentro de los linderos del diseño y acompaño á su solicitud, practicadas previam'te las diligencias concernientes segun lo dispuesto pr. las leyes y reglamentos de la materia usando de las facultades, q. me son conferidas a nombre de la nacion Mejicana he venido en concederle la propiedad del terreno q. solicita, entendiendose d'ha concesion con entera conformidad a las leyes a reserva de la aprobacion ó desaprobacion de la ex'ma diputacion, y bajo las condiciones siguientes:

1o. Los agraciados ni sus herederos podran dividir ni enagluar el q. se les adjudicar, imponerlo censo, vinculo, fianza, hipoteca, ni pasarlo á manos muertas.

2o. Podra cercarlo, sin perjudicar las travesias caminos y servidumbres, lo disfrutará libre y esclusivamente destinandolo al cultivo y uso q. mejor le acomode.

3o. Cuando se le confiera la propiedad solicitara del juez respetivo le de la posecion legitimo ó juridica en virtud de este despacho por el cual se demarcaran los linderos y pondran las mojoneras.

4. El terreno de que se le hace donacion es previamente el q. se espresa en la solicitud del interesado y se demarca en el diseño q. corre agregado el espediente y el juez q. los posecionarse pasara aviso a este gobierno del numero de sitios q. comprehende.

En consecuencia mando q. reviendole de titulo el presente, y teniendose pr. firmé y valedero se tome razon en el libro q. corresponda, y se entreque al interesado pa. su resguardo y demas fines.

Dada en la ex-Mision de Santa Barbara, a 16 de Mayo, de 1837.

JUAN B. ALVARADO,
VICTOR PRUDHON, *Secretario.*

[*For map see original, page* 23.]

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, Surveyor General of the United States for the State of California, and, as such, now having in my office, and under my charge and control, a portion of the archives of the former Spanish

and Mexican territory or department of Upper California, do hereby certify that the eight preceding and hereunto annexed pages of tracing paper, numbered from one to eight, inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file, and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., this 31st day of March, 1852.

SAM'L D. KING,
Surveyor Gen'l Ca'fa.

Filed in office, May 7th, 1852.

GEO. FISHER, *Secretary.*

"B."—*Translation of Espediente.*

Stamp fourth, One Cuartilla.

Provisionally authorized by the maratime custom-house of the port of Monterey, in the department of the Californias, for the year one thousand eight hundred forty, and one thousand eight hundred forty-one.

(Signed) ALVARADO,
(Signed) ANTONIA MA. OSIO.

[Monterey Custom-house.]

To his Excellency the Governor:

Citizen Guillermo Dominguez Foxen, a native of the kingdom of England, a resident of this territory about sixteen years, and married in the same, before your excellency, with due respect and in the most favorable manner in law, says: That being able to improve and cultivate a land, which is vacant in the Cañada of Tinacal, which place is not recognised as the property of any private individual or pueblo, and consequently is vacant and in a condition to be granted in colonization, in conformity with the laws, and transmitting the corresponding map, he prays your excellency to have the goodness to decide as he requests, in which he will receive favor and grace, swearing that he does not act from malice, and whatever else may be necessary, D. D. D.

Santa Barbara, May 12th, 1837.

(Signed) GUILLERMO DOMINGO FOXEN.

MONTEREY, *April* 29, 1842.

Don Guillermo Domingo Foxen, having been in the occupation of the land mentioned in this petition since the year 1837, and there being no objection to granting it, I declare him owner of the place named Tinacal, in conformity with the laws and regulations on the matter; let the corresponding map be annexed, and let the proper title be issued,

directing this expediente to the most excellent departmental junta for its approval.

His excellency the governor thus ordered, decreed and signed, to which I certify.

Citizen Juan B. Alvarado, Governor ad interim of the free and sovereign State of Upper California, and President of the Most Excellent Deputation, formed a constituent Congress.

Whereas Señor Guillermo Domingo Foxen, native of Great Britain, and naturalized in the United States of Mexico, has for his own personal benefit and that of his family petitioned for the land known by the name of Tinacal, within the boundaries (shown by) the map which accompanied his petition, the proper measures being previously taken as required by the laws and regulations on the matter; using the powers which are conferred on me in the name of the Mexican nation, I have granted him the ownership of the land solicited, said grant being understood to be in entire conformity with the laws, subject to the approval or disapproval of the most excellent deputation, and under the following conditions, to wit:

1st. Neither the grantees nor their heirs may divide or alienate that which is granted them; subject it to any tax, entail, pledge, mortgage, or convey it in mortmain.

2d. He may enclose it without prejudice to the crossings, roads, and servitudes; and enjoy it freely and exclusively, making such use and cultivation of it as may best suit him.

3d. When the ownership is conferred on him, he shall request the proper magistrate to give him legitimate or juridical possession in virtue of this order, by which the boundaries will be marked out and the bounds placed.

4th. The land of which donation is made is solely that referred to in the petition of the person interested, and marked out on the map which goes attached to the espediente, and the magistrate who may give the possession will inform this government of the number of leagues it contains.

In consequence, I order that this present, serving him for a title, and being held as firm and valid, note be made of it in the corresponding book, and it be delivered to the person interested, for his security and other purposes.

Given in the ex-Mission of Santa Barbara, on the sixteenth day of May, 1837.

(Signed) JUAN B. ALVARADO.
(") VICTOR PRUDHON,
Secretario.

Opinion and Decree.

WILLIAM D. FOXEN, claimant,
vs.
THE UNITED STATES.
} "Tinacal."—No. 219.

Commission for ascertaining and settling Private Land Claims in the State of California.—Session at San Francisco.

Decision by H. J. Thornton.

The claim presented in this case is founded upon a grant made on the 29th of April, 1842, under and in virtue of the decree of the Mexican Government of 18th of August, 1824, and of the ordinance of the federal executive of Mexico of the 21st of November, 1828, by Juan B. Alvarado, governor of California, to the claimant for two square leagues of land, of which land it appears a grant had been previously made, viz., in the month of May, 1837, but with no definite description of locality and quantity of the land so granted. A measurement was made and possession delivered in the manner in which, at that time, those acts were usually done. Possession of the land, continued residence upon it, and its use for pasturage and cultivation, have been had and enjoyed by the grantee since about the year of the first above named grant down to the present time. Of the authority of Alvarado to make the grant, and of its genuineness, no doubt is suggested. All those facts are fully proved by an expediente regularly authenticated from the public archives of the former governments of the country, by documentary evidence, and the testimony of witnesses in the case. The objection, that the governor does not appear to have submitted his grant to the departmental assembly and obtained their approval of it, as well as all other objections which may be urged against the confirmation of this claim, have been fully considered and overruled by the board in the case of Cruz Cervantes and others, heretofore decided. According to the principles of decision prescribed for our government in the 11th section of the act of the 3d of March, 1851, this claim is declared to be valid, and we proceed to enter the following decree of final confirmation. In this, Commissioner Hall concurs.

H. J. THORNTON.

This board, upon full consideration of the various grounds affecting the validity of the said claim, having come to the conclusion that the same is valid, wherefore now proceeds to make, and does hereby make, the following decree of final confirmation, viz.: It is decreed that the said claim be confirmed to the claimant to the extent and quantity of square leagues or sitios de ganado mayor, and for no more, being the same land described in the grant and espediente referred to therein, and of which the possession was had under the same grant; provided, that the said quantity of land granted, and now here confirmed, be contained within the boundaries called for in the said grant and map referred to therein; and if there be less than the said named quantity

within the said bounds, then we confirm to the claimant that less quantity, it being apparent that said quantity exceeds the minimum of two hundred varas, prescribed in the ordinance of the 21st of November, 1828.

Given under our hands this 7th February, 1853.

HILAND HALL,
HARRY J. THORNTON,
Commissioners.

Filed in office, Feb'y 7th, 1853.

GEO. FISHER, *Secretary.*

Recorded in Journal, vol. 3, page 137.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-two pages, numbered from 1 to 32, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 219, on the docket of the said board, wherein William D. Foxen is the claimant against the United States, for the place known by the name of Tinecal.

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this thirteenth day of April, A. D. 1854, and of the independence of the United States of America the seventy-eighth.

GEO. FISHER, *Sec'y.*

UNITED STATES DISTRICT COURT,
Southern District of California.

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify that the foregoing 33 pages, numbered from 1 to 33, both inclusive, contain a full, true and correct copy of transcript No. 200, filed in this office, wherein William D. Foxen is appellee and the United States are appellants for "Tinacal."

[SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of said court at Los Angeles, California, this nineteenth day of January, A. D. 1856, and of the independence of the United States of America the eightieth.

C. E. CARR, *Cl'k.*

DISTRICT COURT OF THE UNITED STATES,
Southern District of California.

CLERK'S OFFICE, LOS ANGELES COUNTY.

WILLIAM D. FOXEN, appellee, ads. THE UNITED STATES, appellants. } Docket No. 200. (Transcript No. 219.)

Be it remembered, that on the fifth day of February, A. D. 1855, in the district court of the United States for the southern district of California, the following proceedings and decision of the commission to ascertain and settle the private land claims in the State of California, when setting as a board, in the case wherein William D. Foxen is the claimant against the United States for the place named "Tinacal," was received and filed, and docketed with No. 200, and is as follows, to wit:

(Vide page 1.)

MONTEREY, *Sept. 22d*, 1854.

In case No. 200, William D. Dixen, for Tinacal, the notice of appeal from the U. S. Attorney General was received.

(Vide page 3.)

LOS ANGELES, *Oct. 4th*, 1855.

In same case the petition of the United States for review was filed.

(Vide page 4.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *Oct. 4th*, 1855.

In same case the answer of appellee was filed.

(Vide page 5.)

LOS ANGELES, *5th of Oct.*, 1855.

In same case the opinion of the court, confirming the claim, was delivered, and the following decree entered.

(Vide page 6.)

LOS ANGELES, *Oct.* 18, 1855.

In same case, on motion of P. Ord, U. S. attorney, the following order for appeal was filed.

(Vide page 7.)

Notice of Appeal.

ATTORNEY GENERAL'S OFFICE,
10*th August*, 1854.

W. D. FOXEN
vs.
THE UNITED STATES. } 219.

You will please take notice, that an appeal in the above case, (a transcript of the proceedings in which was received in this office on the 27th of April, 1854,) from the decision of the commissioners to ascertain and settle the private land claims in the State of California, to the district court of the United States for the southern district of California, will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Rec'd at Monterey, 22d Sept., –'54.

A. S. TAYLOR, *Dep'y Clerk.*

In the District Court of the United States for the southern district of California.—Hon. Isaac S. K. Ogier, judge.

WILLIAM D. FOXEN
ads
THE UNITED STATES. } No. 200.—Transcript No. 219.

The petition of Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, respectfully represents: That on or about the 7th day of May, A. D. 1852, William Domingo Foxen petitioned the United States land commissioners for the State of California, claiming two square leagues of land, called "Tinacal," situate in the county of Santa Barbara, State of California. That on or about the 7th day of February, A. D. 1853, the said commissioners confirmed the said claim. That thereafter, to wit, on or about the 27th day of April, A. D. 1854, the Hon. Caleb Cushing, Attorney General of the United States, received a duly certified transcript of the proceedings, with the evidence and decision of the said cause.

That thereafter, to wit, on or about the 22d day of September, A. D. 1854, the said Attorney General of the United States filed, or caused to be filed, with the clerk of this hon. court a notice of the intention of the *the* United States to prosecute the appeal in said cause.

That on or about the 5th day of February, A. D. 1855, the said commissioners filed, or caused to be filed, in the office of the clerk of this hon. court a duly certified transcript of their proceedings, with the evidence and decision in said cause.

That the land claimed lies in the southern district of *of* California, and within the jurisdiction of this hon. court; and this petitioner denies generally that the said claimant has any valid right or title to the said land.

Wherefore, the said petitioner prays that the said William D. Foxen, or his attorney, may be served with a copy of this petition; and that,

after due proceedings had, the said decision of the said commissioners may be reviewed, reversed and set aside; and that this hon. court will decree the said claim or title to be invalid, with costs and general relief.

P. ORD,
Att'y of the U. S. for the southern district of California.

Filed, Oct. 4th, 1855. C. E. CARR, *Cl'k.*

Answer of Appellee.

In the United States District Court for the southern district of California.

THE UNITED STATES, appellants,
vs.
W. D. FOXEN, appellee.

William Domingo Foxen appears by his attorneys, and for answer to the petition of the United States filed herein, says:

That his title to the land called "Tinacal," as set forth and described in his petition to the Board of Commissioners, and in the documentary and other evidence filed in this case, is a good and valid title. And he prays this hon'le court to affirm the decision of the Board of Commissioners, and to decree his title to be valid. The land claimed lies in the southern district of California.

HALLECK, PEACHY & BILLINGS,
Att'ys for Appellee.

Filed, Oct. 4th, 1855.

C. E. CARR, *Cl'k.*

UNITED STATES, appellant,
vs.
WILLIAM D. FOXEN, appellee. } No. 200.

This cause coming on to be heard at a special term of this court, on an appeal from the final decision of the commissioners to ascertain and settle private land claims in the State of California, under the act of Congress approved March 3d, 1851, upon the transcript of the decision and proceedings, and the papers and evidence on which said decision was founded; and it appearing that said transcript has been duly filed, according to law, and counsel for the respective parties having been heard, it is ordered, adjudged and decreed, that the decision of the said commissioners be affirmed, and that the claim of the said William D. Foxen to the land described in the grant in this case is a good and valid claim, and the same is hereby confirmed to the extent of two square leagues, and no more: Provided, that the said quantity of two square leagues be contained within the limits called for in said grant and map to which it refers; but if there be less than said last named quantity in the said boundaries, then the claim of the said appellee to said less quantity is hereby confirmed.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the southern dist. of California.